

SECOND REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 1488
96TH GENERAL ASSEMBLY

5412L.02C

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 386.370, 386.710, and 393.150, and to enact in lieu thereof four new sections relating to the regulation of public utilities.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 386.370, 386.710, and 393.150, RSMo, are repealed and four new
2 sections enacted in lieu thereof, to be known as sections 386.370, 386.710, 386.715, and
3 393.150, to read as follows:

386.370. 1. The commission shall, prior to the beginning of each fiscal year beginning
2 with the fiscal year commencing on July 1, 1947, make an estimate of the expenses to be
3 incurred by it during such fiscal year reasonably attributable to the regulation of public utilities
4 as provided in chapters 386, 392 and 393 and shall also separately estimate the amount of such
5 expenses directly attributable to such regulation of each of the following groups of public
6 utilities: Electrical corporations, gas corporations, water corporations, heating companies and
7 telephone corporations, telegraph corporations, sewer corporations, and any other public utility
8 as defined in section 386.020, as well as the amount of such expenses not directly attributable
9 to any such group.

10 2. The commission shall allocate to each such group of public utilities the estimated
11 expenses directly attributable to the regulation of such group and an amount equal to such
12 proportion of the estimated expenses not directly attributable to any group as the gross intrastate
13 operating revenues of such group during the preceding calendar year bears to the total gross
14 intrastate operating revenues of all public utilities subject to the jurisdiction of the commission,
15 as aforesaid, during such calendar year. The commission shall then assess the amount so
16 allocated to each group of public utilities, subject to reduction as herein provided, to the public
17 utilities in such group in proportion to their respective gross intrastate operating revenues during

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

18 the preceding calendar year, except that the total amount so assessed to all such public utilities
19 shall not exceed [one-fourth] **twenty-three hundredths** of one percent of the total gross
20 intrastate operating revenues of all utilities subject to the jurisdiction of the commission.

21 3. The commission shall render a statement of such assessment to each such public
22 utility on or before July first and the amount so assessed to each such public utility shall be paid
23 by it to the director of revenue in full on or before July fifteenth next following the rendition of
24 such statement, except that any such public utility may at its election pay such assessment in four
25 equal installments not later than the following dates next following the rendition of said
26 statement, to wit: July fifteenth, October fifteenth, January fifteenth and April fifteenth. The
27 director of revenue shall remit such payments to the state treasurer.

28 4. The state treasurer shall credit such payments to a special fund, which is hereby
29 created, to be known as "The Public Service Commission Fund", which fund, or its successor
30 fund created pursuant to section 33.571, shall be devoted solely to the payment of expenditures
31 actually incurred by the commission and attributable to the regulation of such public utilities
32 subject to the jurisdiction of the commission, as aforesaid. Any amount remaining in such
33 special fund or its successor fund at the end of any fiscal year shall not revert to the general
34 revenue fund, but shall be applicable by appropriation of the general assembly to the payment
35 of such expenditures of the commission in the succeeding fiscal year and shall be applied by the
36 commission to the reduction of the amount to be assessed to such public utilities in such
37 succeeding fiscal year, such reduction to be allocated to each group of public utilities in
38 proportion to the respective gross intrastate operating revenues of the respective groups during
39 the preceding calendar year.

40 5. In order to enable the commission to make the allocations and assessments herein
41 provided for, each public utility subject to the jurisdiction of the commission as aforesaid shall
42 file with the commission, within ten days after August 28, 1996, and thereafter on or before
43 March thirty-first of each year, a statement under oath showing its gross intrastate operating
44 revenues for the preceding calendar year, and if any public utility shall fail to file such statement
45 within the time aforesaid the commission shall estimate such revenue which estimate shall be
46 binding on such public utility for the purpose of this section.

386.710. 1. The public counsel shall have the following powers and duties:

2 (1) He **or she** shall employ a staff or hire on a contract basis such employees and experts
3 as are necessary to carry out the purposes and responsibilities of his **or her** office, and shall set
4 their compensation within the appropriation made for that purpose;

5 (2) He **or she** may represent and protect the interests of [the public] **residential, small**
6 **commercial and industrial, and agricultural customers** in any proceeding before or appeal
7 from the Public Service Commission;

8 (3) He **or she** shall have discretion to represent or refrain from representing [the public]
9 **in all matters in any proceeding other than matters involving how costs should be allocated**
10 **between customer classes and the interest of residential customers, small commercial and**
11 **industrial customers as defined in the public utility's tariffs, and agricultural customers**
12 in [any proceeding] **all matters relating to the allocation of costs between customer classes.**
13 He **or she** shall consider in exercising his **or her** discretion the importance and the extent of the
14 [public interest involved] **interests of residential, small commercial, and industrial and**
15 **agricultural customers involved** and whether [that interest] **those interests** would be
16 adequately represented without the action of his **or her** office. If the public counsel determines
17 that there are conflicting [public] interests involved in a particular matter, he **or she** may choose
18 to represent one such interest based upon the considerations of this section, to represent no
19 interest in that matter, or to represent one interest and certify to the director of the department
20 of economic development that there is a significant [public] interest which he cannot represent
21 without creating a conflict of interest and which will not be protected by any party to the
22 proceeding. The director of the department shall select an attorney, to be paid from funds
23 appropriated for this purpose, to represent that segment of the [public] **interests of residential,**
24 **small commercial, or agricultural customers** certified to him **or her** by the public counsel as
25 unrepresented. Nothing in this section shall be construed to limit the right of any person, firm
26 or corporation specified in subsection 1 of section 386.390 to petition or make complaint to the
27 commission or otherwise intervene in proceedings or other matters before the commission.

28 2. The public counsel shall be served with all proposed tariffs, initial pleadings, and
29 applications, in all proceedings before the Public Service Commission, and shall be served with
30 a copy of all orders of the commission.

31 3. Nothing in sections 386.071, 386.150, 386.155, 386.170, 386.200, 386.330, 386.360,
32 386.390, 386.400, 386.410, 386.420, 386.440, 386.450, 386.480, 386.500, 386.530, 386.540,
33 386.600, 386.700 and 386.710, shall be construed or interpreted to mean that the public counsel
34 shall not have the right to appeal any and all orders of the Public Service Commission to the
35 courts [which right of appeal exists and has existed since the time of transfer as provided in
36 section 386.500].

37 4. He **or she** shall have all powers necessary or proper to carry out the duties specified
38 in this section.

39 **5. In determining how the amounts assessed against a public utility in connection**
40 **with public counsel's exercise of its duties under this section should be allocated to and**
41 **collected from the utility's respective customer classes, the Public Service Commission shall**
42 **take into consideration the degree to which each class benefits from such representation.**

386.715. 1. The public counsel shall, prior to the beginning of each fiscal year, make available to the commission an estimate of the expenses to be incurred by the public counsel during such fiscal year, reasonably attributable to his or her responsibilities under sections 386.700 and 386.710 and shall also separately estimate the amount of such expenses directly attributable to such responsibilities with respect to each of the following groups of public utilities: electrical corporations, gas corporations, water corporations, heating companies, telephone corporations, telegraph corporations, sewer corporations, and any other public utility as defined in section 386.020, as well as the amount of such expenses not directly attributable to any such group.

2. The public counsel shall allocate to each such group of public utilities the estimated expenses directly attributable to his or her responsibilities under sections 386.700 and 386.710 with respect to such group and an amount equal to such proportion of the estimated expenses not directly attributable to any group as the gross intrastate operating revenues of such group during the three preceding calendar years bears to the total gross intrastate operating revenues of all public utilities subject to the jurisdiction of the commission during such calendar years. The amount so allocated to telephone corporations shall not exceed three percent of the total estimated expenses directly attributable to the public counsel's responsibilities under sections 386.700 and 386.710. The commission shall then assess, on behalf of the public counsel, the amount so allocated to each group of public utilities, subject to reduction as provided in this section, to the public utilities in such group in proportion to its respective gross intrastate operating revenues during the preceding calendar year. The amount assessed shall not exceed three hundredths of one percent. Nothing in this section shall authorize the commission to determine how the public counsel allocates the estimated expenses directly attributable to his or her responsibilities under sections 386.700 and 386.710 or how the assessment imposed under this section is spent by the public counsel.

3. On behalf of the public counsel, the commission shall render a statement of such assessment to each such public utility on or before July first and the amount assessed to each such public utility shall be paid by it to the director of revenue in full on or before July fifteenth next following the rendition of such statement, except that any such public utility may at its election pay such assessment in four equal installments not later than the following dates next following the rendition of such statement, to wit: July fifteenth, October fifteenth, January fifteenth, and April fifteenth. The director of revenue shall remit such payments to the state treasurer.

4. The state treasurer shall credit such payments to a special fund, which is hereby created, to be known as "The Public Counsel Fund", which fund, or its successor fund

37 **created under section 33.571, shall be devoted solely to the payment of expenditures**
38 **actually incurred by the public counsel and attributable to his or her responsibilities under**
39 **sections 386.700 and 386.710 and shall consist of all appropriations, transfers, and**
40 **payments, to the fund and investment income on the fund. Any amount remaining in such**
41 **special fund or its successor fund at the end of any fiscal year shall not revert to the general**
42 **revenue fund, but shall be applicable to the payment of such expenditures of the public**
43 **counsel in the succeeding fiscal year and shall be applied by the public counsel to the**
44 **reduction of the amount to be assessed to such public utilities in such succeeding fiscal**
45 **year, such reduction to be allocated to each group of public utilities in proportion to the**
46 **respective gross intrastate operating revenues of the respective groups during the**
47 **preceding calendar year.**

48 **5. In order to enable the public counsel to make the allocations and assessments**
49 **provided for in this section, each public utility subject to the jurisdiction of the commission**
50 **shall file with the commission on or before March thirty-first of each year, a statement**
51 **under oath showing its gross intrastate operating revenues for the preceding calendar year,**
52 **and if any public utility shall fail to file such statement within the time established in this**
53 **subsection, the commission shall estimate such revenue. Such estimate shall be binding on**
54 **such public utility for the purpose of this section.**

393.150. 1. Whenever there shall be filed with the commission by any gas corporation,
2 electrical corporation, water corporation or sewer corporation any schedule stating a new rate or
3 charge, or any new form of contract or agreement, or any new rule, regulation or practice relating
4 to any rate, charge or service or to any general privilege or facility, the commission shall have,
5 and it is hereby given, authority, either upon complaint or upon its own initiative without
6 complaint, at once, and if it so orders without answer or other formal pleading by the interested
7 gas corporation, electrical corporation, water corporation or sewer corporation, but upon
8 reasonable notice, to enter upon a hearing concerning the propriety of such rate, charge, form of
9 contract or agreement, rule, regulation or practice, and pending such hearing and the decision
10 thereon, the commission upon filing with such schedule, and delivering to the gas corporation,
11 electrical corporation, water corporation or sewer corporation affected thereby, a statement in
12 writing of its reasons for such suspension, may suspend the operation of such schedule and defer
13 the use of such rate, charge, form of contract or agreement, rule, regulation or practice, but not
14 for a longer period than one hundred and twenty days beyond the time when such rate, charge,
15 form of contract or agreement, rule, regulation or practice would otherwise go into effect; and
16 after full hearing, whether completed before or after the rate, charge, form of contract or
17 agreement, rule, regulation or practice goes into effect, the commission may make such order in
18 reference to such rate, charge, form of contract or agreement, rule, regulation or practice as

19 would be proper in a proceeding initiated after the rate, charge, form of contract or agreement,
20 rule, regulation or practice had become effective.

21 2. If any such hearing cannot be concluded within the period of suspension, as above
22 stated, the commission may, in its discretion, extend the time of suspension for a further period
23 not exceeding six months. At any hearing involving a rate sought to be increased, the burden of
24 proof to show that the increased rate or proposed increased rate is just and reasonable shall be
25 upon the gas corporation, electrical corporation, water corporation or sewer corporation, and the
26 commission shall give to the hearing and decision of such questions preference over all other
27 questions pending before it and decide the same as speedily as possible.

28 **3. Upon conclusion of the rate case proceeding or a complaint involving rates**
29 **brought under section 386.390, the commission shall issue its order authorizing temporary**
30 **and prospective rate adjustments. Such adjustments shall be calculated based on the**
31 **record evidence in the proceeding under review and the information contained in the**
32 **reconciliation and billing determinants provided by the commission under subsection 4 of**
33 **section 386.420 and in accordance with the procedures set forth in subsection 4 of this**
34 **section.**

35 **4. (1) If the effect of the commission's order is to decrease the public utility's rates**
36 **and charges then the commission shall, in addition to a permanent rate adjustment,**
37 **approve a temporary rate adjustment, designed to flow through to the public utility's then**
38 **existing customers the amounts that were collected by the utility in excess of the amounts**
39 **that would have been collected by the utility had the rates authorized by the commission**
40 **in its order been in effect for the period defined in this subdivision, plus interest at the**
41 **higher of the prime bank lending rate minus two percentage points or zero. Such amounts**
42 **shall be calculated for the period commencing with the date revenues, rate base, and**
43 **expenses were last updated or trued-up in the rate proceeding and the date the new rates**
44 **authorized by the commission are scheduled to go into effect. Such amounts shall be**
45 **reflected as a temporary rate adjustment over a one-year period of time utilizing the rate**
46 **design approved by the commission in the rate proceeding.**

47 **(2) If the effect of the commission's order is to increase the public utility's rates and**
48 **charges, then the commission shall approve, in addition to a permanent rate adjustment,**
49 **a temporary rate adjustment designed to allow the public utility to recover from its then**
50 **existing customers the amounts it would have collected had the rates authorized by the**
51 **commission in its order been in effect for the period defined in this subdivision, plus**
52 **interest at the higher of the prime bank lending rate minus two percentage points or zero.**
53 **Such amounts shall be calculated for the period commencing with the date revenues, rate**
54 **base, and expenses were last updated or trued-up in the rate proceeding and the date the**

55 new rates authorized by the commission are scheduled to go in effect. Such amounts shall
56 be reflected as a temporary rate adjustment over a one-year period of time utilizing the
57 rate design approved by the commission in the rate proceeding.

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